

ESTTA Tracking number: **ESTTA541845**

Filing date: **06/05/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Leatrice Nanette Carley		
Entity	Individual	Citizenship	UNITED STATES
Address	c/o The Merman Law Firm 1201 Shepherd Dr. Houston, TX 77007 UNITED STATES		

Attorney information	John F. Luman III / Matt Schneller Bracewell & Giuliani LLP 711 Louisiana St. Suite 2300 Houston, TX 77002 UNITED STATES docketing@bgllp.com, matt.schneller@bgllp.com, john.luman@bgllp.com, david.morris@bgllp.com, nancy.foley@bgllp.com Phone:2062046241		
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### Applicant Information

Application No	85805403	Publication date	05/14/2013
Opposition Filing Date	06/05/2013	Opposition Period Ends	06/13/2013
Applicant	Oberoi Networks, Inc. 13609 Sand Pebble Chase Houston, TX 77077 UNITED STATES		

### Goods/Services Affected by Opposition

Class 005. First Use: 2012/12/00 First Use In Commerce: 2012/12/00  
All goods and services in the class are opposed, namely: Herbal supplements

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Marks Cited by Opposer as Basis for Opposition

U.S. Application No.	85769427	Application Date	11/01/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CONTROL		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 005. First use: First Use: 2002/07/01 First Use In Commerce: 2002/07/01 Herbal supplements for Sexual Enhancement; Natural supplements for treating erectile dysfunction
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U.S. Application No.	85768951	Application Date	11/01/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	CONTROL ALL NATURAL SEXUAL ENHANCEMENT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2002/07/01 First Use In Commerce: 2002/07/01 All-natural herbal supplements for sexual enhancement; All-natural supplements for treating erectile dysfunction		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	CONTROL		
Goods/Services	Herbal supplements for Sexual Enhancement; Natural supplements for treating erectile dysfunction		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	CONTROL ALL NATURAL SEXUAL ENHANCEMENT		
Goods/Services	Herbal supplements for Sexual Enhancement; Natural supplements for treating erectile dysfunction		

Attachments	XTRA CONTROL opposition.pdf(16636 bytes ) Appendix 1.pdf(47976 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Matt Schneller/
Name	Matt Schneller
Date	06/05/2013

**IN THE UNITED STATES PATENT & TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

NANETTE CARLEY d/b/a BIOCEUTICALS,  
Petitioner,

vs.

OBEROI NETWORKS, INC.  
Registrant

Opposition No.: \_\_\_\_\_  
NOTICE OF OPPOSITION  
Ser. No.: 85805403  
Mark: XTRA CONTROL  
International Class: 5  
Filed: Dec. 18, 2012  
Publication date: May 14, 2013

**NOTICE OF OPPOSITION**

Nanette Carley d/b/a Bioceuticals (“Bioceuticals” or “Petitioner”) believes that it will be damaged by the registration of the mark XTRA CONTROL (“Oberoi’s Mark”) as registered in Ser. No.: 85805403, filed on December 18, 2012 (“Oberoi’s Application”), filed by Oberoi Networks, Inc. (“Oberoi”).

**THE PARTIES**

1. Bioceuticals has a place of business at 14090 FM 2920, Suite C, Tomball, Texas 77377.
2. Oberoi is a Texas corporation with a place of business at 13609 Sand Pebble Chase, Houston, TX 77077.

**BIOCEUTICALS AND ITS COMMON LAW CONTROL MARK**

3. Bioceuticals was established in 2001 and has long provided a variety of natural and/or herbal supplements, including without limitation natural and/or herbal supplements for sexual enhancement and/or treating erectile dysfunction.
4. Bioceuticals owns common-law trademark rights in the CONTROL word mark and the CONTROL ALL NATURAL SEXUAL ENHANCEMENT word mark, for herbal supplements for sexual enhancement, and Bioceuticals has used those marks in connection with

such herbal supplements since at least as early as December 2007 and the marks remains in use for those goods.

### **OBEROI AND OBEROI'S APPLICATION**

5. Oberoi filed Oberoi's Application for XTRA CONTROL for "herbal supplements" in International Class 5 on December 18, 2012 ("Oberoi's Filing Date"), which was assigned Serial No. 85/805,403.

6. Oberoi's Application was published for opposition on May 14, 2013.

7. Oberoi's Application claims first use and first use in commerce on December 2012 for the goods in Class 5.

8. Therefore, Oberoi's filing date of December 18, 2012 is Oberoi's earliest claimed priority date ("Oberoi's Claimed First Use Date").

### **BIOCEUTICALS HAS PRIORITY IN ITS COMMON-LAW CONTROL MARKS**

9. Bioceuticals used its common law Marks CONTROL and CONTROL ALL NATURAL SEXUAL ENHANCEMENT prior to Oberoi's Claimed First Use Date. Bioceuticals sold and shipped its natural and/or herbal supplements for sexual enhancement and/or treating erectile dysfunction in commerce in the United States to more than forty states prior to the December 2007. Bioceuticals sold and shipped its natural and/or herbal supplements for sexual enhancement and/or treating erectile dysfunction under its common law CONTROL and CONTROL ALL NATURAL SEXUAL ENHANCEMENT marks to more than thirty purchasers in Texas prior to December 2007.

10. On November 1, 2012, Bioceuticals filed trademark applications for CONTROL (serial number 85/769,427) and CONTROL ALL NATURAL SEXUAL ENHANCEMENT

(serial number 85/768,951). Status and title copies of each, from the U.S. Patent & Trademark Office's TSDR database, are appended to this Notice of Opposition as Appendix 1.

11. Bioceuticals' CONTROL (serial number 85/769,427) and CONTROL ALL NATURAL SEXUAL ENHANCEMENT (serial number 85/768,951) trademark applications were filed prior to Oberoi's Claimed First Use Date.

### **LIKELIHOOD OF CONFUSION**

12. Oberoi's XTRA CONTROL word mark fully encompasses and is confusingly similar to Bioceuticals' CONTROL mark and is confusingly similar to and CONTROL ALL NATURAL SEXUAL ENHANCEMENT marks.

13. The word XTRA as part of the mark in Oberoi's Application modifies the word CONTROL.

14. The word XTRA, a homonym of "extra," is a laudatory and weak term.

15. Bioceuticals avers that Oberoi's supplements and Bioceuticals' supplements are both provided to purchasers of dietary and/or herbal supplements, including without limitation purchasers of supplements targeted to sexual enhancement.

16. Bioceuticals further avers that Oberoi's goods are related to those of Bioceuticals under its CONTROL and CONTROL ALL NATURAL SEXUAL ENHANCEMENT marks.

17. Bioceuticals further avers that Oberoi's goods are competitive since Oberoi's supplements and Bioceuticals' supplements are both provided to purchasers of dietary and/or herbal supplements, including without limitation purchasers of supplements targeted to sexual enhancement.

18. Bioceuticals further avers that consumers are likely to believe that Oberoi's goods are provided by, sponsored by, or affiliated with Bioceuticals.

19. Bioceuticals further avers that Oberoi's Mark so resembles Bioceuticals' marks and Bioceuticals' goods as to be likely, when applied to Oberoi's supplements, to cause confusion, to cause mistake, and to deceive the public with consequent injury to Bioceuticals, the trade, and the public.

20. Bioceuticals further avers that it will be damaged if Oberoi's Application is allowed to be registered, because consumers and prospective consumers are likely to be confused, mistaken, or deceived into believing that Oberoi or Oberoi's goods are connected with, sponsored by, or approved by Bioceuticals. Any defect, object, or fault found with Oberoi's goods marketed or sold under Oberoi's Mark will reflect upon and seriously injure the valuable reputation that Bioceuticals has established for its CONTROL supplements and/or CONTROL ALL NATURAL SEXUAL ENHANCEMENT supplements. Registration of Oberoi's Mark would also damage Bioceuticals because such registration would improperly award a statutory exclusive right to Oberoi in violation and derogation of the prior and superior rights of Bioceuticals, and unduly narrows the scope of protection afforded to Bioceuticals under its common law rights, all in contravention of 15 U.S.C. § 1052(d).

21. Because there is a likelihood of confusion between Oberoi's Mark and Bioceuticals' senior rights in Bioceuticals' marks, registration of Oberoi's Application should be refused under 15 U.S.C. § 1064. Registration of Oberoi's Application would be inconsistent with Bioceuticals' senior rights in the CONTROL and CONTROL ALL NATURAL SEXUAL ENHANCEMENT marks. Bioceuticals and the public are and will continue to be damaged by registration of Oberoi's mark.

WHEREFORE, for any of all of the claims above, Bioceuticals respectfully prays that its Notice of Opposition be sustained and that the Oberoi Application be refused registration. This

Notice of Opposition is filed according to the rules governing electronic submissions to the Trademark Trial and Appeal Board, including payment of the requisite \$300 fee.

DATED: June 5, 2013.

<p><b>CERTIFICATE OF SERVICE</b></p> <p>I hereby certify that this NOTICE OF OPPOSITION is being deposited with the United States Postal Service with sufficient postage as first class mail on June 5, 2013 in an envelope addressed to the listed correspondent for the Oberoi and the filing correspondent for the Oberoi application:</p> <p>John S. Egbert Egbert Law Offices, PLLC 1314 Texas St., Fl. 21 Houston, TX 77002-6577</p> <p>and</p> <p>Oberoi Networks, Inc. 13609 Sand Pebble Chase Houston, TX 77077</p> <p>Signature: <u>/Matthew D. Schneller/</u></p>	<p>Respectfully submitted,</p> <p><b>BRACEWELL &amp; GIULIANI LLP</b></p> <p>Signed: <u>/Matthew D. Schneller/</u> John F. Luman III, David Morris, Erin S. Hennessy, Matthew D. Schneller Bracewell &amp; Giuliani LLP 711 Louisiana Street, Ste. 2300 Houston, Texas 77002 713-221-1596</p>
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## **APPENDIX 1**

TSDR Status and Title Copies for Ser. Nos. 85/769,427 and 85/768,951



Generated on: This page was generated by TSDR on 2013-05-24 17:13:27 EDT

Mark: CONTROL

Control

US Serial Number: 85769427

Application Filing Date: Nov. 01, 2012

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Trademark

Status: An Office action suspending further action on the application has been sent (issued) to the applicant. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: May 15, 2013

## Mark Information

Mark Literal Elements: CONTROL

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Acquired Distinctiveness Claim: In whole

## Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks \*..\* identify additional (new) wording in the goods/services.

For: Herbal supplements for Sexual Enhancement; Natural supplements for treating erectile dysfunction

International Class(es): 005 - Primary Class

U.S Class(es): 006, 018, 044, 046, 051, 052

Class Status: ACTIVE

Basis: 1(a)

First Use: Jul. 01, 2002

Use in Commerce: Jul. 01, 2002

## Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

## Current Owner(s) Information

Owner Name: Carley, Leatrice Nanette

Owner Address: c/o The Merman Law Firm  
1201 Shepherd Dr.  
Houston, TEXAS 77007  
UNITED STATES

Legal Entity Type: INDIVIDUAL

Citizenship: UNITED STATES

## Attorney/Correspondence Information

### Attorney of Record

Attorney Name: Derek Merman

Docket Number: Carley - Con

Attorney Primary Email Address: [Derek@MermanLawFirm.com](mailto:Derek@MermanLawFirm.com)

Attorney Email Authorized: Yes

### Correspondent

Correspondent DEREK MERMAN

Name/Address: THE MERMAN LAW FIRM, P.C.  
1201 SHEPHERD DR  
HOUSTON, TEXAS 77007-5429  
UNITED STATES

Phone: 713.351.0679

Fax: 713.583.0555

Correspondent e-mail: [Derek@MermanLawFirm.com](mailto:Derek@MermanLawFirm.com) [Tommie@MermanLawFirm.com](mailto:Tommie@MermanLawFirm.com)

Correspondent e-mail Yes  
Authorized:

Domestic Representative - Not Found

## Prosecution History

Date	Description	Proceeding Number
May 15, 2013	NOTIFICATION OF LETTER OF SUSPENSION E-MAILED	6332
May 15, 2013	LETTER OF SUSPENSION E-MAILED	6332
May 15, 2013	SUSPENSION LETTER WRITTEN	83191
Mar. 05, 2013	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Mar. 05, 2013	NON-FINAL ACTION E-MAILED	6325
Mar. 05, 2013	NON-FINAL ACTION WRITTEN	83191
Feb. 28, 2013	ASSIGNED TO EXAMINER	83191
Nov. 07, 2012	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Nov. 05, 2012	NEW APPLICATION ENTERED IN TRAM	

## TM Staff and Location Information

### TM Staff Information

TM Attorney: LORENZO, KATHLEEN H

Law Office Assigned: LAW OFFICE 109

### File Location

Current Location: TMEG LAW OFFICE 109 - EXAMINING  
ATTORNEY ASSIGNED

Date in Location: May 15, 2013

## Proceedings

### Summary

Number of Proceedings: 1

### Type of Proceeding: Cancellation

Proceeding Number: [92057091](#)

Filing Date: Apr 23, 2013

Status: Pending

Status Date: Apr 23, 2013

Interlocutory Attorney: MARY CATHERINE FAINT

### Defendant

Name: Pure Vitamins and Natural Supplements DBA Vigor-25

Correspondent Address: PURE VITAMINS AND NATURAL SUPPLEMENTS  
1708 E NORTH BAY ST  
TAMPA FL , 33610  
UNITED STATES

Correspondent e-mail: [drken@purevitaminsusa.com](mailto:drken@purevitaminsusa.com)

### Associated marks

Mark	Application Status	Serial Number	Registration Number
CONTROL	Cancellation Pending	<a href="#">85611373</a>	<a href="#">4261122</a>

### Plaintiff(s)

Name: Nanette Carley dba Bioceuticals

Correspondent Address: JOHN F LUMAN III  
BRACEWELL & GIULIANI LLP  
711 LOUISIANA ST, STE 2300  
HOUSTON TX , 77002  
UNITED STATES

Correspondent e-mail: [docteting@bglp.com](mailto:docteting@bglp.com) , [matt.schneller@bglp.com](mailto:matt.schneller@bglp.com) , [john.luman@bglp.com](mailto:john.luman@bglp.com) , [david.morris@bglp.com](mailto:david.morris@bglp.com) , [stephanie.blair@bglp.com](mailto:stephanie.blair@bglp.com)

### Associated marks

Mark	Application Status	Serial Number	Registration Number
CONTROL	Suspension Letter - Mailed	<a href="#">85769427</a>	

CONTROL ALL NATURAL SEXUAL ENHANCEMENT

Suspension Letter - Mailed

[85768951](#)

Prosecution History			
Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Apr 23, 2013	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Apr 23, 2013	Jun 02, 2013
3	PENDING, INSTITUTED	Apr 23, 2013	

**Generated on:** This page was generated by TSDR on 2013-05-24 17:14:35 EDT

**Mark:** CONTROL ALL NATURAL SEXUAL ENHANCEMENT

Control All Natural Sexual  
Enhancement

**US Serial Number:** 85768951

**Application Filing Date:** Nov. 01, 2012

**Filed as TEAS Plus:** Yes

**Currently TEAS Plus:** Yes

**Register:** Principal

**Mark Type:** Trademark

**Status:** An Office action suspending further action on the application has been sent (issued) to the applicant. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

**Status Date:** May 15, 2013

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## Mark Information

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**Mark Literal Elements:** CONTROL ALL NATURAL SEXUAL ENHANCEMENT

**Standard Character Claim:** Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

**Mark Drawing Type:** 4 - STANDARD CHARACTER MARK

**Disclaimer:** "ALL-NATURAL SEXUAL ENHANCEMENT"

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**For:** All-natural herbal supplements for sexual enhancement; All-natural supplements for treating erectile dysfunction

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**Class Status:** ACTIVE

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**First Use:** Jul. 01, 2002

**Use in Commerce:** Jul. 01, 2002

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## Basis Information (Case Level)

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**Filed Use:** Yes

**Currently Use:** Yes

**Amended Use:** No

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**Currently ITU:** No

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**Filed 44D:** No

**Currently 44D:** No

**Amended 44D:** No

**Filed 44E:** No

**Currently 44E:** No

**Amended 44E:** No

**Filed 66A:** No

**Currently 66A:** No

**Filed No Basis:** No

**Currently No Basis:** No

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## Current Owner(s) Information

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**Owner Name:** Carley, Leatrice Nanette

**Owner Address:** c/o The Merman Law Firm  
1201 Shepherd Dr.  
Houston, TEXAS 77007  
UNITED STATES

**Legal Entity Type:** INDIVIDUAL

**Citizenship:** UNITED STATES

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## Attorney/Correspondence Information

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### Attorney of Record

**Attorney Name:** Derek Merman

**Attorney Primary Email Address:** [Derek@MermanLawFirm.com](mailto:Derek@MermanLawFirm.com)

**Attorney Email Authorized:** Yes

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### Correspondent

**Correspondent Name/Address:** DEREK MERMAN  
THE MERMAN LAW FIRM, P.C.

1201 SHEPHERD DR  
HOUSTON, TEXAS 77007-5429  
UNITED STATES

Phone: 713.351.0679

Fax: 713.583.0555

Correspondent e-mail: [Derek@MermanLawFirm.com](mailto:Derek@MermanLawFirm.com) [Tommie@MermanLawFirm.com](mailto:Tommie@MermanLawFirm.com)

Correspondent e-mail Yes  
Authorized:

Domestic Representative - Not Found

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Defendant

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Correspondent Address: PURE VITAMINS AND NATURAL SUPPLEMENTS  
1708 E NORTH BAY ST  
TAMPA FL , 33610  
UNITED STATES

Correspondent e-mail: drken@purevitaminsusa.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
CONTROL	Cancellation Pending	85611373	4261122

Plaintiff(s)

Name: Nanette Carley dba Bioceuticals

Correspondent Address: JOHN F LUMAN III  
BRACEWELL & GIULIANI LLP  
711 LOUISIANA ST, STE 2300  
HOUSTON TX , 77002  
UNITED STATES

Correspondent e-mail: docketing@bqllp.com , matt.schneller@bqllp.com , john.luman@bqllp.com , david.morris@bqllp.com , stephanie.blair@bqllp.com

Associated marks			
Mark	Application Status	Serial Number	Registration Number

CONTROL	Suspension Letter - Mailed	<a href="#">85769427</a>	
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CONTROL ALL NATURAL SEXUAL ENHANCEMENT	Suspension Letter - Mailed	<a href="#">85768951</a>	
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